IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 820 OF 2005

THE POST MASTER, MUMBAI & ORS. ... PETITIONERS

Versus

THE DADAR CO-OPERATIVE HOUSING SOCIETY LTD. .. RESPONDENTS

Mr. Y. S. Bhate i/b S. S. Sarker for petitioners

Mr. D. H. Hungund for R

CORAM:-SMT. RANJANA DESAI, J.

DATED:-7-3-2005

P.C.

The petitioners are original defendants in T.E. & R. Suit No. 400/422 of 2001filed in the Small Causes Court at Mumbai by the respondent-plaintiff. The suit is filed in April, 2001. The possession of the suit premises was sought on the ground that the protection of the Rent Act was not available to the defendants.

2. On 14th March, 2004, the plaintiff sought leave to amend the plaint. By amendment the plaintiff wanted to take up grounds of bonafide requirement and illegal subletting. The trial court by its order dated 30th September, 2004 allowed the amendment application by holding that the amendment can be allowed at any stage of the proceedings and since the suit herein had not yet commenced in order to avoid multiplicity of the litigation the amendment application should be granted.
3. The defendants carried revision before the Division Bench of the Small Causes Court. The revision came to be dismissed on the ground that it was not maintainable as the order allowing the application of the plaintiffs for amendment of the plaint is purely a procedural order. Hence the petitioners have approached this court.
4. I have heard the learned counsel for the petitioner at some length. He submitted that the suit was filed as far back as in April, 2001. The present application is filed on 17th March, 2004 and hence amendment application deserves to be rejected.
5. The learned counsel further submitted that the suit itself is not maintainable. He submitted that proper parties have not been added as defendants and therefore, the trial court was wrong in granting the amendment application.
6. I am unable to agree with the learned counsel. It is true that the

amendment application is filed after some lapse of time. However, the facts remains that the trial has not commenced. The trial court is right in coming to a conclusion that inasmuch as the trial has not commenced, in order to avoid multiplicity of litigation the amendment deserves to be granted. Hence the petition is dismissed.

7. It is clarified that all contentions of the parties are kept open.